IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS JURISDICTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

REVIEW PETITION NO.20 OF 2006
IN
APPEAL NO.165 OF 2006
IN
NOTICE OF MOTION NO.1066 OF 2006
IN
SUIT NO.93 OF 2005

Mrs.Shahjahan Gulfam Shamani,
Residing at Room No.501,
6th Floor, 2-b, Uttam Building,
Dr.Ram Manohar Cooperative
Housing Society Ltd., Taximen
Colony, Kurla(West),
Mumbai 400 070. ..Petitioner.
..(Orig.Appellant/-
Defendant No.3)

V/s.

1. Vinod Kumar Takhatmal Kachhara
of Mumbai, Indian Inhabitant,
Resudubg at 4/A, Venus Regency
Navroji Lane, Ghatkopar(West),
Mumbai 400 086.

2. Sohanlal Vardichand Dhakad
of Mumbai, Indian Inhabitant,
residing at 2/B, Mahavir Bhavan,
Sarveshwar Mandir Marg,
Kurla(West), Mumbai 400 070.
And also at Mangal Jewellers,
29-C,Agarwal Market, Vile Parle
(East), Mumbai 400 057.

3. Mr.Sahajahan Gulfam Shamani,
residing at Room No.501,
6th floor, 2-B, Uttam Building,
Dr.Ram Manohar Co-op.Housing
Society Ltd., Taximen
Colony, Kurla(West),
Mumbai 400 070. ..Respondents.
(No.1-Org.Plaintiff
Nos.2 and 3-Org.

Defendants 1 & 2)

Mr.S.C.Naidu with Mr.Pratap Singh for petitioner.

Mr.Sanjay Sawant with Mr.Himanshu Khode i/b. M/s. Sanjay Sawant & Associates for respondents.

CORAM: A.M.KHANWILKAR & ABHAY S.OKA,JJ

DATE : OCTOBER 6, 2006.

P.C. :

1. Heard Shri Naidu, learned Counsel appearing for the Review Petitioner in support of the Review Petition.

2. The first grievance is regarding direction as regards payment of royalty. He submitted that the Review Petitioner being the owner of the shop premises may be permitted to occupy the shop without payment of Royalty. We find no error apparent on the face of the record for reviewing the said direction regarding payment of royalty.

3. The second grievance is that the Counsel appointed by the Review Petitioner was not available on the date on which the Appeal was argued and decided. Non-availability of the Counsel is no ground to review the order which was passed after hearing learned Advocate on record for the Review

Petitioner.

4. The third grievance of the Review Petitioner is regarding liberty granted to the first Respondent to take appropriate proceedings in respect of the basement. The Appeal arose out of the order passed on Notice of Motion taken out by the first Respondent. In the Notice of Motion taken out by the said Respondent, there was no prayer made as regards basement and the prayer was confined to the Shop premises on the ground floor. The said liberty was granted while dealing with the submission made by the learned Counsel for the first Respondent which is noted in paragraph 6 of the order passed in Appeal. Therefore, there is no merit in this contention raised by Shri Naidu, the Learned Counsel for the Review Petitioner.

5. There is no error apparent on the face of the record. There is no ground to review the order.

6. Shri Naidu lastly submitted that a liberty may be granted to the Appellant to make necessary Application in respect of the basement. It will be open even to the Appellant to take out appropriate

proceeding for seeking appropriate relief in respect of the basement, which will be decided on its own merits in accordance with law.

7. Subject to what is stated, above Review Petition is dismissed.

(A.M.KHANWILKAR,J)

(ABHAY S.OKA,J)